



# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*  
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L. Preston Bryant, Jr.  
Secretary of Natural Resources

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Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO MARYVIEW HOSPITAL**

**Registration No. 60103**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §10.1-1307, §10.1-1316, and §10.1-1319 between the State Air Pollution Control Board and Maryview Hospital for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. "Maryview" means Maryview Hospital located at 3636 High Street in Portsmouth, Virginia.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.
9. "Order" means this document, also known as a Consent Order.

10. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
11. "Regulations" mean the Virginia Regulations for the Control and Abatement of Air Pollution which are located in the Virginia Administrative Code (9 VAC 5-80-10 *et seq.*).

**SECTION C: Findings of Fact and Conclusions of Law**

1. Maryview is a 346-bed acute care hospital ("Facility") which includes a 54-bed behavioral medicine center located at 3636 High Street in Portsmouth, Virginia.
2. On October 3, 2003, Maryview was issued a Stationary Source Permit ("Permit") to Modify and Operate various equipment used in the Facility including boilers, sterilizers, aeration cabinets, generators, and a diesel fire pump. The list of permitted equipment included three New Source Performance Standard ("NSPS") boilers; two 10.5 million BTU/hour Cleaver boilers, and one 12.5 million BTU/hour Aztec boiler which are dual-fueled by distillate oil or natural gas.
3. On December 13, 2007, DEQ compliance staff conducted a site inspection at the Facility and records review which indicated that certifications were not available for shipments of distillate oil delivered to the storage tank during years 2006 and 2007, and records were not available at the time of the inspection for the daily throughput of natural gas for each NSPS boiler, annual throughput of natural gas burned by the three boilers combined and annual usage in hours per year of each of the generators and the fire pump. Also, it was apparent during the inspection that semi-annual fuel reports for the NSPS boilers for distillate oil delivered from January 2005 through June 2007 (five reports) were not submitted as required by the Permit.
4. Condition 11 of the Permit requires Maryview to obtain certifications from the fuel supplier with each shipment of distillate oil delivered to the storage tank. Maryview violated its Permit by failing to make available the certifications for shipments of distillate oil delivered to the storage tank occurring between 2006 and 2007.
5. Condition 18 of the Permit requires Maryview to maintain records of the daily throughput of natural gas and distillate oil for each boiler, the annual throughput of natural gas and distillate oil burned in the three boilers combined and the annual usage (in hours per year) of each of the generators and the fire pump. Maryview violated its permit by failing to make available the records of the daily throughput of natural gas for each boiler, the annual throughput of natural gas and distillate oil burned in the three boilers combined and the annual usage of each of the generators and the fire pump.
6. Condition 19 of the Permit requires Maryview to submit fuel quality reports for distillate oil delivered to the fuel tank to the TRO Director within 30 days after the end of each semi-annual period. Maryview violated its permit by failing to submit the fuel

quality reports for distillate oil delivered to the fuel tank from January 2005 through June 2007.

7. On February 11, 2008, DEQ issued to Maryview a Notice of Violation addressing the above allegations and applicable regulatory and statutory requirements.
8. On January 7, 2008, Maryview submitted a permit application to update the Permit to reflect the removal of two ethylene oxide sterilizers, two ethylene oxide aeration cabinets, and two natural gas-fueled emergency generators from service and the installation of one new 1,250 KW diesel emergency generator.
9. In response to Maryview's submittal of the permit application, on March 10, 2008, DEQ compliance staff conducted an inspection at the Facility and found a new diesel engine (1865 HP, 1,250 KW) powered Caterpillar Model 1577 emergency generator same as listed in the January 7, 2008 permit application that had been installed and operated at the Facility. A review of DEQ files did not identify an air permit for the new diesel engine powered emergency generator listed in the January 7, 2008 permit application which was reportedly installed on December 16, 2005.
10. The DEQ issued a Stationary Source Permit to Modify and Operate which includes the new emergency generator to Maryview on March 13, 2008.
11. 9 VAC 5-80-1320(B)(2)(b) requires electrical generators greater than 1,675 HP and 1,125KW to have a DEQ air permit prior to installation and operation. Maryview violated the Regulations by failing to obtain a DEQ air permit prior to the installation and operation of the new 1,865 HP and 1,250 KW diesel engine powered emergency generator.
12. On March 24 2008, DEQ issued Maryview a Notice of Violation addressing the allegations and applicable regulatory and statutory requirements listed in Section C.8 through C.11 of this Order.
13. In order to resolve these violations, Maryview Hospital has agreed to pay a civil charge, as required in Section D of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders Maryview, and Maryview voluntarily agrees, to pay a civil charge of \$9,500.00 in accordance with the following schedule:

- a. By August 15, 2008, Maryview Hospital shall submit a check to the Department in the amount of \$4,750.00.
- b. Following the initial payment of \$4,750.00 as described in the above paragraph a., by September 16, 2008, Maryview shall submit a check to the Department in the amount of \$4,750.00.

- c. If the Department fails to receive a payment pursuant to the schedule, described in the above paragraphs a. and b., the payment shall be deemed late. If any payment is late, the Department reserves the right to demand in writing full payment of the balance owed by Maryview Hospital, under this Order. Maryview Hospital shall pay such balance within 15 days of receipt of a demand letter from the Department. Any allowance by the Department of a late payment by Maryview Hospital shall not serve as a waiver of the Department's reserved right to accelerate payment of the balance.
- d. Payments shall be made by check payable to the "Treasurer of Virginia," and shall be sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check, Maryview shall indicate that this submission of Payment is pursuant to this Order, which shall include Maryview's Federal Identification Number.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Maryview, for good cause shown by Maryview, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the Notices of Violation issued to Maryview on February 11, 2008 and March 24, 2008. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For the purposes of this Order and subsequent actions with respect to this Order, Maryview admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Maryview consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Maryview declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Air Pollution Control Act

and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Maryview to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Maryview shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Maryview shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Maryview shall notify the TRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the TRO Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Maryview. Notwithstanding the foregoing, Maryview agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Maryview. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Maryview from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Maryview Hospital voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of July 25, 2008.

Francis L. Daniel  
Francis L. Daniel.

Maryview Hospital voluntarily agrees to the issuance of this Order.

By: [Signature]  
Date: 7/22/08

Commonwealth of Virginia

City/County of Portsmouth

The foregoing document was signed and acknowledged before me this 22 day of July, 2008, by [Signature], who is  
(month) (name)

Director Engineering of Maryview Hospital on behalf of Maryview Hospital.  
(title)

[Signature]  
Notary Public

My commission expires: \_\_\_\_\_ My Commission Expires March 31, 2009

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